

Council Communication

Department: Legal

Case/Project No.

Applicant.

Ordinance No.
Resolution No.

5966

First Reading 1/14/
Second Reading 1/28/
Third Reading

Subject/Title

As part of a development agreement between the City Of Council Bluffs and MidAmerican Energy Company (MAE), the Mayor and his staff agreed to support an amendment to the text of the city's noise ordinance. An ordinance to implement the proposed change has been prepared and placed on your agenda.

BACKGROUND

During the negotiation of a Development Agreement with MAE, which was prompted by the city's desire to annex land owned by MAE, the city started receiving noise complaints targeting MAE as the problem. Since MAE has made a very significant investment in this community with the expansion of its electric generation facility, this of course caused some concern. In response to the complaints, the city was never able to detect a violation of the ordinance by MAE, but nevertheless agreed to review certain alterations to its noise control ordinance. The result is the ordinance that is on your agenda. This new language has been reviewed, and is supported by the City's Board of Health.

Recommendation

It is the recommendation of the Mayor, his staff, and the Council Bluffs Board of Health that this ordinance be approved.

Richard Wade

Department Head Signature

Mayor Signature

5A

ORDINANCE NO. 5966

AN ORDINANCE to amend Chapter 4.50 "Noise Control" of the 2005 Municipal Code of Council Bluffs, Iowa, by repealing Section 4.50.080 "Sound levels by receiving land use" and enacting a new Section 4.50.080 "Sound levels by receiving land use".

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That Chapter 4.50 "Noise Control" of the 2005 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by repealing Section 4.50.080 "Sound levels by receiving land use" and enacting a new Section 4.50.080 "Sound levels by receiving land use", to read as follows:

"4.50.080 Sound levels by receiving land use.

8.1 Maximum Permissible Sound Levels by Receiving Land Use. It is unlawful for any person to operate or cause to be operated on private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table 1 as follows, unless otherwise provided in this chapter, when measured at or within the property boundary of the receiving land use; provided, however, that no measurement of sound levels shall be made less than fifteen (15) meters (fifty (50) feet), or equivalent (Section 4.50.110, Noise Measurement Procedures), from such source of sound.

Table 1
Sound Levels By Receiving Land Use

Sound Emitting Land-Use Category	Sound Receiving Land-Use Category	Sound Level Time of Day	Sound Level Limit, dBA Leq(1)
Residential	Residential	Daytime	55
		Nighttime	45
Business/Commercial	Residential	Daytime	60
		Nighttime	50
Industrial	Residential	Daytime	65
		Nighttime	55
Residential	Business/Commercial	Anytime	60
Business/Commercial	Business/Commercial	Anytime	65
Industrial	Business/Commercial	Anytime	65
Industrial	Industrial	Anytime	75

8.2 Correction for Character of Sound. For any source of sound which emits a pure tone or impulsive sound the Leq(1) sound level limits set forth in subsection (8.1) of this section, shall be reduced by five dBA for any pure tone or impulsive sound. Special instrumentation and measurement techniques are required if a pure tone or impulsive sound is less than five dBA above the background noise level.

8.3 Exemptions. The provisions of this section shall not apply to:

(a) Any of the subsections in Section 4.50.060, except as noted in Section 4.50.060;

(b) Interstate railway locomotives and cars; and

(c) Undeveloped land, farm land and nonstationary farming equipment and all normal agricultural activities.

(d) Notwithstanding Table 1 above, an Electric Utility Generation Facility, as defined in Chapter 15.03 of the Council Bluffs Municipal Code, may generate a decibel reading not to exceed 65 dBA at anytime (day or night) to a receiving land use that is Residential. The level of sound for an Electric Utility Generation Facility shall be measured by using an L90 measurement technique, and for a one hour average. Sound from sources other than the Electric Utility Generation Facility, including but not limited to streets, highways, seasonal insects and other uses, shall not be counted against the ordinance limits.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. This is Ordinance No. 4252 § 1 (part), 1978).

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED

AND

APPROVED February 11, 2008

ORDINANCE NO. 5966

PAGE THREE

THOMAS P. HANAFAN Mayor

Attest:

JUDITH RIDGELEY City Clerk

First Consideration:
Second Consideration:
Public Hearing:
Third Consideration:

January 14, 2008
January 28, 2008
n/a
February 11, 2008

Council Communication

Department: Human Resources Case/Project No. Applicant.	Ordinance No. Resolution No. <u>08-23</u>	Council Action: <u>02/11/2008</u>
--	--	-----------------------------------

Subject/Title

Approval of Wage & Benefit Changes for Police Supervisors (Sergeants, Lieutenant, Captains)

Background/Discussion

Now that we have a three year labor contract with the Fraternal Order of Police, it is important that we make similar adjustments to the Police Supervisory wages and benefits. This will ensure that the proper wage and benefit differentials exist between police department ranks providing the necessary incentive for employees to take advantage of promotional opportunities. The recommended changes will apply to the 23 supervisory officers from the rank of Sergeant through Captain. The Chief is not included in this group.

	Effective 7-1-08	Effective 7-1-09	Effective 7-1-10
Wage Increase	4% increase	3.65% increase	3.65% increase
Insurance changes	30 day prescription limit; 3 tiered drug plan 2 co pays for 90 day mail order	Employee contribution increased to 7.5% of dependent medical cost	Employee contribution increased to 10% of dependent medical cost
Post Employment Health Plan		\$30/ month City contribution	\$35/month contribution
Uniform Maintenance Allowance	\$150/year		
Shift Differential	\$825/year		

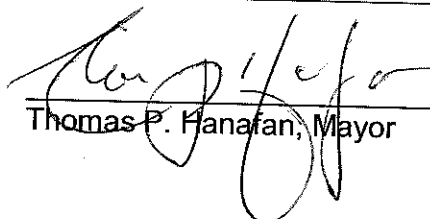
In addition to the changes listed above there are a couple of parity issues that have been brought to my attention. I believe it to be in the City's best interest to address these effective 7-1-08. Specifically, (1) the longevity plan provided to union employees should be applied to Police Supervisors; (2) pay provisions for call back and court time given to union employees should be extended to Police Supervisors; and (3) service requirements for step raises should be reduced from 2 years to 1 year. Some of these changes will require language changes in the Personnel Policies prior to July 1. The costs to implement these parity changes are negligible.

Recommendation

Approval of the wage and benefit changes described above is recommended. I have prepared a resolution that will effectuate these changes

Cindy Lynch, Director of Human Resources

6 A



 Thomas P. Hanafan, Mayor

RESOLUTION NO. 08-23

A RESOLUTION APPROVING CHANGES TO THE
WAGES AND BENEFITS OF POLICE SUPERVISORY STAFF
IN THE RANKS OF SERGEANT, LIEUTENANT AND CAPTAIN
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2011

WHEREAS, There are Supervisory employees of the City of Council Bluffs, Iowa Police Department who do not bargain collectively with the City regarding wages and benefits; and

WHEREAS, it is in the best interests of the City of Council Bluffs to provide equitable treatment of all employees; and

WHEREAS, approval of the attached wage and benefit adjustments is considered to be consistent with the best interests of the City of Council Bluffs:

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

That the wage and benefit changes described in the attached recommendation be adopted and approved in accordance with the indicated effective dates.

ADOPTED AND APPROVED February 11, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

Council Communication

Department: Fire	Ordinance No. Resolution No. <u>08-27</u>	Date: <u>02/11/2008</u>
Case/Project No.		
Applicant: Alan R. Byers		

Subject/Title
Revised 28E Agreement with Pottawattamie County for Hazardous Materials Response

Background/Discussion
A meeting on January 11, 2008 with the County Attorney's Office, City Legal Department and the Fire Department was held to review revisions proposed by the County to the 28E Agreement recently approved by the City Council. The attached agreement contains the revisions agreed upon and is offered for the Mayor's concurrence and City Council approval.

- The revisions are shown within the agreement and include:
- 3.: Delete year reference to specific Iowa Code versions.
 - 6.A: Insertion of the statement "effective upon execution of the agreement" versus "(insert date) to provide an effective start date for the agreement.
 - 6.D: Delete paragraph on fund increases pertaining to personnel benefits and expenses and include statement that includes such expenses within the Base Charge.
 - 7. & 10.: Added statement clarifying County responsibility for losses not covered by insurance.
 - 9.A: Changed "Workers Compensation" to "Medical Expenses covered under Chapter 411.15".
 - 9.C Deleted reference to Paragraph A and added reference to Paragraph B.
 - 13. Deleted statement on period of time to cure breach of agreement.

Recommendation
It is the recommendation of the City Attorney and Fire Chief that the Mayor concur and offer for City Council approval the attached 28E Agreement for Hazardous Materials response to Pottawattamie County.

Department Head Signature _____

Mayor Signature _____

6B

PREPARED BY: City Legal Department, 209 Pearl Street, Council Bluffs, IA 51503
RETURN TO: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503

RESOLUTION NO. 08-27

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT, RECENTLY MODIFIED, FOR THE PROVISION OF HAZARDOUS MATERIALS RESPONSE SERVICES BETWEEN AND AMONG THE CITY OF COUNCIL BLUFFS, THE POTTAWATTAMIE COUNTY EMERGENCY MANAGEMENT COMMISSION AND POTTAWATTAMIE COUNTY.

WHEREAS, an agreement for the City to provide assistance to the Pottawattamie County Emergency Management Commission and Pottawattamie County has been negotiated for situations involving hazardous substance accidents which creates hazardous conditions endangering the general public's health and safety; and

WHEREAS, Chapter 28E of the Iowa Code entitled "Joint Exercise of Governmental Powers" authorizes the agencies to join together to make efficient use of their powers by enabling them to provide joint serves and facilities with other agencies and to cooperate in other ways of mutual advantage; and

WHEREAS, it is in the best interests of the City to enter into this agreement for hazardous materials response.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA

That the Mayor is hereby authorized to execute the agreement which has been recently modified to provide hazardous materials response services between and among the City of Council Bluffs, the Pottawattamie County Emergency Management Commission and Pottawattamie County.

ADOPTED
AND
APPROVED February 11, 2008

Thomas P. Hanafan, Mayor

ATTEST: _____
Judith H. Ridgeley, City Clerk

C.A. 1/28/08

AGREEMENT FOR THE PROVISION OF HAZARDOUS MATERIALS RESPONSE SERVICES BETWEEN AND AMONG THE CITY OF COUNCIL BLUFFS, THE POTTAWATTAMIE COUNTY EMERGENCY MANAGEMENT COMMISSION AND POTTAWATTAMIE COUNTY UNDER CHAPTER 28E OF THE CODE OF IOWA.

WITNESSETH

This agreement is made and entered into by and between the City of Council Bluffs, Iowa (hereinafter called the City), the Pottawattamie County Emergency Management Commission (hereinafter called the Commission) and the County of Pottawattamie (hereinafter called the County).

WHEREAS, the parties recognize that due to modern technology there is a rapid increase in instances of hazardous substance accidents creating hazardous conditions endangering the well being of the general public; and

WHEREAS, the preservation of life and property of the citizens depends on the availability of properly trained personnel and adequate equipment; and

WHEREAS, the City has such trained personnel and equipment and is willing to assist the County and the Commission in case of the release of hazardous substances creating a hazardous condition affecting the environment.

NOW, THEREFORE BE IT REMEMBERED, that for the mutual promises, covenants, and agreements herein contained, the parties have entered onto the following Agreement under Chapter 28E of the Code of Iowa:

1. RECITATION:

The provisions herein, including the recitations set forth above, and including any documents incorporated by reference herein, constitutes the full agreements of the parties.

2. PURPOSE:

The purpose of this agreement is to provide for assistance from the City of Council Bluffs by supplying City personnel, equipment, and/or technical assistance to the Commission and the County in case of a release of a hazardous substance which creates a hazardous condition within, or causes harm within, or threatens immediate harm within the County's jurisdiction. No separate entity is created under this agreement.

3. DEFINITIONS:

For the purposes of this agreement, the definitions in Section 455B.381, 2005-Code of Iowa, and the following definitions shall apply:

- A. The term "Hazardous Condition" means any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance which, because of the quantity, strength and toxicity of the hazardous substance, its mobility in the environment and its persistence, creates an immediate potential danger to the public health or safety of persons or property within Pottawattamie County, at any of the following locations:
 - (1) Within any city or Pottawattamie County Fire District in Pottawattamie County, including those which extend beyond the boundaries of Pottawattamie County; or
 - (2) Within any other area within the boundaries of Pottawattamie County.
- B. The term "Hazardous Condition" includes any accident involving hazardous materials required to be reported under section 321.266(4) of the Code of Iowa.
- C. The term "Hazardous Substance" shall mean and include any, each and all substances or materials regulated pursuant to any Environmental Laws, including, but not limited to, any such substance, emission or material now defined as or deemed to be a regulated substance, hazardous substance, toxic substance, pesticide, explosives, radioactive materials, hazardous waste or any similar or like classification or categorization there under. "Hazardous substance" also means any substance or mixture of substances that presents a danger to the public health or safety or environment and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that in confinement generates pressure through decomposition, heat or other means. The following are examples of substances which, in sufficient quantity, may be hazardous: Acids; alkalis; explosives; fertilizers; heavy metals such as chromium, arsenic, mercury, lead and cadmium; industrial chemicals, paint thinners; paints; pesticides; petroleum products; poisons; radioactive materials; sludge; and organic solvents.
- D. "Responsible person" means the person, whether the owner, agent, lessor, tenant, or operator, in charge of the hazardous substance being stored, processed or handled, or the owner or bailee transporting hazardous wastes or substances whether on public ways or ground or on private property, where the existence or spill of such substance would cause danger to the public or to any person, or damage to the environment.

4. INITIATING REQUESTS:

All requests for aid, assistance, personnel, equipment, and/or technical assistance (to be provisions of this contract) shall be made by:

- A. Within any incorporated municipality, the Chief of either the Fire Department or the Police Department;

- B. Within unincorporated areas in the County, either the County Sheriff or the Chief of the area Fire Department.
- C. The County Emergency Management Coordinator; or
- D. Their designee.

Such requests shall be directed to the Chief of the Council Bluffs Fire Department or the Chief's designee, and shall state as definitively as possible the nature and extent of the hazardous substance emergency so that a determination can be made by the City as to personnel, equipment, and/or technical assistance needed at the hazardous condition.

5. PRIORITY OF REQUEST:

In the event two or more hazardous conditions arise at approximately the same time, the priority of providing service shall be made pursuant to the Council Bluffs Fire Department standard operating procedures, which shall include:

- A. A three (3) level system for determining relative severity; and
- B. Within each level of severity, a system for allocating highest priority to those hazardous conditions which pose the greatest danger to the most people.

A copy of this standard procedure is attached hereto as Exhibit A and is incorporated herein by reference.

No provision of this agreement shall be construed to require the Council Bluff Fire Department Hazardous Materials Team to respond to a request for assistance or to continue assistance if, in the discretion of the Council Bluffs Fire Department Hazardous Materials Team:

- A. Its services are considered necessary to deal with a present emergency in the City of Council Bluffs; or
- B. If actions being taken at the scene of the incident are deemed unsafe to Council Bluffs Fire Department Hazardous Materials team members; or
- C. If because of other emergencies or conditions beyond its control, it cannot respond in a timely matter or must withdraw assistance during the course of an emergency in the City of Council Bluffs.

The Pottawattamie County Emergency Management Commission will make available to the Council Bluff Fire Department any and all Tier II information, contingency plans, maps, communication frequencies, equipment, and other information that will assist the Council Bluffs Fire Department's Hazardous Materials Team in responding to or mitigating an emergency in Pottawattamie County.

6. PAYMENT OR REIMBURSEMENT OF COST:

The Commission shall be obligated to pay or reimburse the City for costs incurred by the City to staff and equip a hazardous material response team to respond to hazardous conditions and emergencies in the County under this agreement. The Commission's payment of the following charges shall be deemed to satisfy this obligation:

A. Base Charge:

The Commission shall pay to the City an annual Base Charge which shall be due and payable in two equal amounts on the fifteenth (15th) day of the months of January and July. The payments are delinquent after 30 days. The first payment shall be due and payable on ~~(insert date)~~ effective upon execution of the agreement. The Base Charge shall be as follows:

~~Calendar year 2007 - (\$22,434.50)~~

Calendar year 2008 - (\$22,434.50)

Calendar year 2009 - (\$44,869.00)

Calendar year 2010 - (\$44,869.00).

The base charge for calendar years 2011 and later will be determined based on costs of operating and maintaining the response team as determined by the Council Bluffs Fire Department. The per capita charge for each year, beginning with calendar year 2011, will be determined by July 1 of the previous year and shall be determined by multiplying the population of the county, according to the most recent census, by a set amount. The City shall notify the Commission of said per capita charge.

B. Response Costs:

In addition to the payment of the Base Charge, the Commission shall pay all costs for each response made pursuant to this agreement. The cost for each response shall be determined by the actual time spent in responding, advising, mitigating, and returning from each incident. Costs shall be determined by reference to the hourly charge for response services set forth in Exhibit B attached hereto and by reference made a part hereof.

Payment of the response costs shall be due and payable within thirty days of receipt by the Commission of an invoice from the City. The City agrees to provide any and all information on the responsible party to assist the Commission in billing for the incident. The City may adjust the schedule of hourly charges shown on Exhibit B at any time during this agreement in order to reflect increased costs of employees, training, equipment, apparatus, and supplies.

C. Payment:

Payment of the base charge and the response costs by the Commission shall be considered as full payment or reimbursement of all costs incurred by the City in the following categories.

1. The full cost of supplies and other materials consumed at the site of a hazardous condition.
2. The salaries, wages, benefits, and medical monitoring expenses for City

- employees responding to the request under this agreement.
3. The proportionate amortized cost of apparatus, equipment, and supplies used in responding to a request under this agreement.

D. Additional Personnel Benefits and Expenses:

~~In the event of injury to or death of any City employee during the course of any response pursuant to this agreement, the Commission shall be obligated to pay the full cost of any personnel benefits or expenses resulting from such response, including but not limited to medical expenses; and — Iowa Code Chapter 411 benefits, or worker's compensation benefits, to the extent such benefits or expenses are not paid by the State of Iowa Municipal Police and Fire Retirement System or by insurance as maintained in Part 9.~~

— Within the base charge, The Commission shall also pay the cost of any fund contribution increases or premium increases attributable to temporary or permanent disabilities incurred by City personnel during the course of a response under this Agreement, if and to the extent said loss or losses cause System losses to exceed those anticipated and a contribution increase is implemented by the system, or to the extent said loss or losses result in a premium increase for any insurance covering such loss or losses. This paragraph does not apply to loss or damage resulting from response to a hazardous condition inside the Council Bluffs City Limits.

7. EXTRAORDINARY LOSSES:

In addition to the reimbursement of costs set forth above, the Commission shall reimburse the City for out-of-pocket costs resulting from loss of or damage to any equipment resulting from the providing of aid or assistance under this Agreement, to the extent such losses are not covered by City insurance. This amount shall be based upon the current value of the equipment, and not necessarily replacement cost. This paragraph does not apply if such loss is the result of gross negligence, recklessness, or wanton intentional misconduct of any officer, employee, agent or representative of the City. This paragraph does not apply to loss or damage resulting from response to a hazardous condition inside the Council Bluffs City Limits.

8. SUPERVISION:

The officer in charge of the personnel of the City and/or Chief of the Council Bluffs Fire Department shall have direct control and supervision of the City personnel and of the use of all apparatus, equipment, and materials of the City consistent with the spirit of this agreement.

The Incident Command System or the National Incident Management System shall be used to manage these types of responses in accordance with OSHA 1910.120. The Council Bluffs Fire Department will report to the local Incident Commander unless otherwise designated by the governing body of the jurisdiction. The Incident Commander shall have responsibility for traffic control, evacuation, crowd control, etc. as per the National Incident Management System.

9. INSURANCE AND INDEMNIFICATION:

A. Insurance:

The City shall procure and maintain in effect during the entire term of this agreement, insurance with coverage in the amounts hereafter specified. Such insurance coverage shall be provided through City self insurance programs, by an insurance company or companies licensed to do business in the State of Iowa, or by a local government risk pool pursuant to section 670.7 of the Code of Iowa.

Coverage	Limits
General Liability	\$5,000,000 per occurrence CSL \$5,000,000 General Aggregate
Auto Liability and Physical Damage	\$5,000,000 per occurrence CSL \$5,000,000 General Aggregate
Workers Compensation covered under Chapter 411.15	Medical Expenses Coverage A - Statutory Coverage B - \$1,000,000, \$3,000,000 Aggregate

B. Hold Harmless:

In the event any civil liability arises, or threatens to arise, and in the event such liability is not covered by insurance procured pursuant to subparagraph (A) hereof, or such liability exceeds the coverage so provided, the Pottawattamie County Emergency Management Commission and the County of Pottawattamie shall defend, indemnify, and hold harmless the City, its officers, employees, members, agents, and representatives from and against any and all liability, claims, damages, actions, judgments, loss, costs, and expenses, including costs of litigations and attorneys fees, whether at law, in equity, before an administrative agent, or otherwise, arising wholly or in part from the acts or omission of City.

C. Limitations:

The provisions of subparagraph 9(AB) shall not extend to damage to property or injuries to any person (including any officer, employee, agent or representative of City) which result from either:

- (1) The intoxication of an Officer, employee, agent or representative of City, provided the intoxication did not result from an exposure to a hazardous substance but due to the effects of alcohol, prescription drug or a controlled substance not prescribed by an authorized medical practitioner, and provided the intoxication was a substantial factor in causing the damaged or injury; or
- (2) The gross negligence or reckless, wanton, or intentional misconduct of any officer, employee, agent, or representative of City. In such circumstances, there shall not be any duty on the part of the Commission and County to indemnify and hold harmless the City, it's officers, employees, members, agents, or representatives. However, this limitation shall not be constructed to otherwise limit the Commission's and the

County's duty to defend until applicability of this limitation ~~if~~ is finally determined.

Nothing contained in these paragraphs shall be construed as a waiver of any statutory immunities and defenses, including but not limited to, those granted by section 455B.393 of the Iowa code or Chapter 670 of the Iowa Code on behalf of the City, its officers, employees, members, agents and representatives.

10. RECOVERY OF COSTS EXCEEDING COMMISSION'S BUDGET:

In the event that the costs incurred by the Pottawattamie County Emergency Management Commission pursuant to paragraphs 6, 7, or 9 above for hazardous materials response services by the City, including costs of defending and indemnifying the City, to the extent not covered by City insurance, exceed the Commission's current budget, such that the Commission is unable to make timely payment to the City as above provided, the County of Pottawattamie agrees that it will make payment to the City on behalf of the Commission in a timely manner, and shall itself recover said costs by appropriate tax levy or otherwise.

11. THIRD PARTY RECOVERY:

Nothing in this agreement shall prevent the Commission and County from recovering costs of services rendered from an entity or third party who is the person having control over a hazardous substance, as defined herein, where such recovery of costs is provided for by law, or from seeking reimbursement from the Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act 1986 or as subsequently amended.

To assist the Commission and the County in the recovery of costs the City does hereby agree to comply with all state and federal reporting requirements including but not limited to, the required reporting to the Iowa Department of Natural Resources and twenty-four (24) hour reporting to the U.S. Environmental Protection Agency under CERCLA and the National Response Center.

The City also agrees to provide all pertinent billing information in its possession to the Commission and to provide assistance to the Commission and the County in recovering the costs of the response.

12. EFFECTIVE PERIOD:

This agreement, unless terminated as stated in Part 13, shall continue from year to year.

13. TERMINATION:

Any party to this Agreement may terminate this Agreement at any time upon written notice either delivered or mailed by certified U.S. mail to the addressees set forth below for such parties. ~~The notice shall offer a reasonable period of time to cure the breach.~~ Such notice shall be given at least ninety (90) days before the effective date of termination and the date of

termination shall be stated in the notice. For any liability that is incurred during the term of this Agreement, the parties will continue to be liable even after the effective date of any such termination.

14. EFFECTIVE DATE:

This agreement shall be in full force and effect upon the happening of all of the following:

- A. Its execution by the parties of this Agreement after acceptance and approval by the Council Bluffs City Council and The Pottawattamie County Emergency Management Commission and the County of Pottawattamie Board of Supervisors.
- B. The filing of an executed counterpart or photocopy of this Agreement with the Secretary of State.
- C. The filing of an executed counterpart or photocopy of this Agreement in the Office of the County Auditor for Pottawattamie County and the City Clerk for the City of Council Bluffs, Iowa.

15. AMENDMENT:

This agreement may only be amended by written instrument duly executed by the parties hereto.

16. THIRD PARTY BENEFICIARIES:

It is the intent of the parties that no person who is not a signatory to this Agreement shall benefit from the provisions of this Agreement and that no cause of action is created herein for the benefit of any party.

17. ORDINANCE ADOPTION:

As part of this agreement, the County shall be required to adopt an ordinance requiring the person or persons responsible for the hazardous materials condition, release, and/or spill to be liable for the cost of containment and cleanup, including the costs of the responding members of the Council Bluffs Fire Department.

18. TRAINING:

The Commission shall agree to provide the appropriate training for emergency responders in compliance with OSHA 1910.120 (q). This would necessitate the responding Pottawattamie County fire departments and any emergency medical services responding for transport to have Hazardous Materials Operations level training; any responding law enforcement agencies to have Hazardous Materials Awareness level training and any other responding personnel to have the appropriate level of training commensurate with their hazardous material incident responsibilities.

On an annual basis each member of the responding agencies shall have necessary training or refresher training in compliance with OSHA 1910.120(q). The Council Bluffs Fire Department Hazardous Materials Response Team may provide any or all of the necessary

training at a cost agreeable to both parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective the day, month and year set opposite signature.

Attest:

CITY CLERK

Address: City of Council Bluffs
209 Pearl Street
Council Bluffs, Iowa 51503

CITY OF COUNCIL BLUFFS

BY: _____
MAYOR

DATE: _____

Attest:

Address: _____

POTTAWATTAMIE COUNTY
EMERGENCY MANAGEMENT
COMMISSION:

BY: _____
CHAIRMAN

Attest:

COUNTY AUDITOR

Address: Courthouse
227 So. 6th Street
Council Bluffs, IA 51501

COUNTY OF POTTAWATTAMIE:

BY: _____
CHAIRMAN, BOARD OF SUPERVISORS

DATE: _____

EXHIBIT A

Under this agreement, if multiple requests for service are received, the Council Bluffs Fire Department will use the following criteria to rank the incidents in order to their severity with Level 1 being the least severe and Level 3 being the most severe. Those incidents ranked the most severe will be given priority with incidents of lesser hazard handled promptly when staffing and resources allow.

LEVEL ONE:

Level 1 is an incident of such nature or scope that it can be safely mitigated by the initial local fire department response of apparatus and personnel. The local fire Department will generally require little, if any, assistance from other departments or agencies.

Incidents Conditions and Product Identification:

- 1) No DOT placards are required for the product.
- 2) NFPA 704 diamond would have 0 or 1 in all categories
- 3) All ORMS would fall under Level 1.

Container Size:

- 1) Small (e.g. pails, drums, cylinder under one ton, packages, bags).

Fire Exposure Potential:

- 1) Low.

Leak Severity:

- 1) No release
- 2) Small release contained or confined in a small area with readily available resources.
- 3) Examples of sample release:
 - Forty gallons or less of common hydrocarbon liquid (gasoline, diesel, fuel oil).
 - Low pressure natural gas.
 - LP gas from lines smaller than two inch diameter.
 - Less than (5) gallons of other types of flammable liquids, combustible liquids, pesticides, or corrosives that are confined and do not pose an immediate exposure or risk to the public, response personnel, property, or the environment.

Life Safety:

- 1) No life threatening situation from materials involved.
- 2) No evacuation beyond the initial isolation zone.

Environmental Impact:

- 1) Minimal.

Container Integrity:

- 1) No damage.

LEVEL TWO:

Level 2 is an incident of such nature or scope that other resources and technical assistance are needed in addition to the initial responding personnel and apparatus. Level Two incidents would require assistance from other departments or agencies not initially responding, such as public works, Iowa DOT, Iowa DNR or Iowa Public Health.

Incident Conditions and Product Identification:

- 1) DOT placards are required for the product(s).
- 2) NFPA 704 rating of two (2) in any category.
- 3) PCB's without fire.
- 4) EPA regulated waste.

Container Size:

- 1) Medium (e.g. One ton cylinder, portable containers, nurse tanks, multiple small packages).

Fire Exp Potential:

- 1) Medium.

Leak Severity:

- 1) Release not controllable without special resources.

Life Safety:

- 1) Immediate risk to the public and response personnel in a localized area.
- 2) Limited evacuation area, beyond the immediate incident location.

Environmental Impact (potential):

- 1) Moderate.

Container:

- 1) Damaged but able to contain the contents to allow transfer of the product.

LEVEL THREE:

Level Three is an incident of such nature or scope where large amounts of resources would be required. Level Three incidents would require assistance from all of the agencies listed in Level Two plus Federal agencies. Level Three incidents would likely result from releases of large quantities of hazardous substances or moderately sized releases of exceptionally hazardous substances.

Incident Conditions and Product Identification:

- 1) Poison A (gas), Explosives A and B, Organic Peroxide, Flammable Solid, Materials Dangerous When Wet, Chlorine, Fluorine, Anhydrous Ammonia, Radioactive Materials.
- 2) NFPA 704 rating of 3 or 4 in any category and any special hazards.
- 3) DOT inhalation hazards.
- 4) PCB's with fire.
- 5) EPA extremely hazardous substances.
- 6) Cryogenics.

Container:

- 1) Large (e.g. tank cars, tank trucks, stationary tanks, hopper cars/trucks, multiple medium containers).

Fire Explosion Potential:

- 1) High.

Leak Severity:

- 1) Release may not be controllable even with special resources.

Life Safety:

- 1) Immediate or a potentially immediate exposure risk to large segments of the public.
- 2) Large evacuation area, (mass evacuation) beyond the immediate incident location.

Environmental Impact (potential)

- 1) Severe.

Container Integrity:

- 1) Damage to such an extent that catastrophic rupture is possible.

Multiple Requests During an Incident:

If while mitigating a hazardous condition, a request to respond to an incident with a higher priority occurs, the Council Bluffs Fire Department personnel shall be released from the incident when it is safely possible. When determining incident priority levels, those hazardous conditions occurring in densely populated areas or threatening to have a severe impact on the environment shall be given the higher priority.

EXHIBIT B

Hazardous Materials Response Fees as set by City of Council Bluffs Municipal Code,
Chapter 4.60.040:

Manpower	\$ 40.00/hour
Apparatus (utilized) including Rescue 30	\$ 150.00/hour
Apparatus (standby)	\$ 100.00/hour
Ambulance/Rescue Squad	\$ 150.00/hour
Command Vehicle/Utility Truck	\$ 100.00/hour
Supplies or outside services, including cell phone and internet access.	Market price plus 15% administrative fee
Mileage (assessed after the first ten miles)	\$ 6.00/mile
Decontamination, repair, replacement, or maintenance of supplies, equipment and apparatus.	Cost plus 15% administrative fee

Council Communication

Department: Human Resources	Ordinance No. Resolution No. <u>08-28</u>	Date: <u>02-11-2008</u>
Case/Project No.		
Applicant.		

Subject/Title
Approval of Wage & Benefit Changes for Fire Supervisors (Asst. Fire Chiefs, EMS Operations Officer)

Background/Discussion

As the Council may recall, the Fire Administrative staff have been tied to the general non-union wage and benefit plan and because of this their wages and benefits have not kept pace with the employees they supervise (Fire Union). A few benefit changes were approved by the City Council last year to address departmental concerns; however, having these employees continue to be treated as general non-union employees will result in a continual erosion of wages and benefits and undo the progress that has been made.

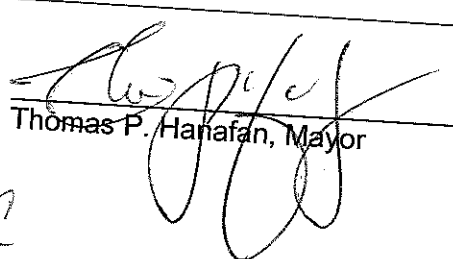
It is felt that the first step to maintaining fairness in pay is to put Fire Supervisors on their own pay scale with a 30% differential between the top Fire Captain and the newly hired Assistant Fire Chief. The pay plan would have 3 additional steps that the newly promoted Asst. Fire Chief would be eligible to move to in the next three year's service. All of the current Fire Administrative employees would be paid at the top step which would give them the same approximate wage increase that the Fire Captains will receive.

The proposed benefit changes for this group of employees would be the same as those provided in the new Fire Union contract with respect to the insurance plan and employee contributions that benefit the City, the longevity plan, the Post Employment Health Plan (PEHP), and sick leave buy back. The effective date of these changes would coincide with the dates provided in the union contract.

Approval of these wage and benefits changes will solve a long standing parity problem and should provide a way to continually attract the best employees to these critical positions.

Recommendation

Approval of the wage and benefit changes described above is recommended. I have prepared a resolution that will effectuate these changes.

Cindy Lynch, Director of Human Resources  Thomas P. Hanafan, Mayor

60

RESOLUTION NO. 08-28

A RESOLUTION APPROVING CHANGES TO THE
WAGES AND BENEFITS OF FIRE SUPERVISORY STAFF
IN THE RANKS OF ASSISTANT FIRE CHIEF AND EMS OPERATION OFFICER
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2011

WHEREAS, There are Supervisory employees of the City of Council Bluffs, Iowa Fire Department who do not bargain collectively with the City regarding wages and benefits; and

WHEREAS, it is in the best interests of the City of Council Bluffs to provide equitable treatment of all employees; and

WHEREAS, approval of the attached wage and benefit adjustments is considered to be consistent with the best interests of the City of Council Bluffs:

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

That the wage and benefit changes described in the attached recommendation be adopted and approved in accordance with the indicated effective dates.

ADOPTED AND APPROVED February 11, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

Council Communication

Department: Legal	Ordinance No. Resolution No. <u>R 08-36</u>	Date: <u>February 11, 2008</u>
Case/Project No.		
Subject/Title Resolution authorizing the Mayor to execute the Order Accepting the Acknowledgement/Settlement Agreement from Pilot Travel Center #329 for a third violation of the State's tobacco laws.		
Background/Discussion Recent compliance checks resulted in citations being issued to employees of several businesses for providing tobacco to minors. We are pursuing civil penalties against the permittees. On December 10, 2007, an employee of Pilot Travel Center was issued a citation for providing tobacco to a minor. Since this was the third violation in three years, the penalty is a \$1,500 civil penalty and a 30-day suspension of their cigarette permit. Pilot Travel Center has made payment of the \$1,500 penalty and has submitted their Acknowledgement/Settlement Agreement. The 30-day suspension of the cigarette permit will be served in the near future. A resolution has been prepared authorizing the Mayor to execute the Order to Accept the Acknowledgement/Settlement Agreement from Pilot Travel Center #329.		
Recommendation Authorize the Mayor to execute Order Accepting the Acknowledgement/Settlement Agreement from Pilot Travel Center #329 for a third violation of the State's tobacco laws.		

Department Head Signature _____

Mayor Signature _____

6D

RESOLUTION NO. 08-36

A RESOLUTION authorizing the Mayor to execute the Order Accepting the Acknowledgement/Settlement Agreement from Pilot Travel Center, #329 for a third violation of Iowa's tobacco laws.

WHEREAS, the State of Iowa has enacted a comprehensive program aimed at reducing underage tobacco use; and

WHEREAS, compliance checks in Council Bluffs resulted in a citation being issued to an employee of Pilot Travel Center #329 on December 10, 2007, for a third violation of the State's tobacco laws; and

WHEREAS, for a third violation within a period of three years, the penalty is a \$1,500 civil penalty and the retailer's cigarette permit shall be suspended for a period of 30 days.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

That the Mayor is hereby authorized to execute the Order Accepting the Acknowledgement/Settlement Agreement attached hereto and made a part hereof, acknowledging receipt of the \$1,500 civil penalty, and suspending the cigarette permit for Pilot Travel Center #329 for a period of thirty (30) days, commencing at 12:00 a.m. on _____, and concluding at 12:00 a.m. on _____.

ADOPTED

AND

APPROVED February 11, 2008

THOMAS P. HANAFAN

Mayor

Attest:

JUDITH RIDGELEY

City Clerk

BEFORE THE CITY COUNCIL
OF THE CITY OF COUNCIL BLUFFS, IOWA

IN RE:

Pilot Travel Centers, L.L.C.
P.O. Box 10146
Knoxville, TN 37939-1046

Pilot Travel Center #329
2647 South 24th Street
Council Bluffs, IA 51501

ORDER ACCEPTING
ACKNOWLEDGEMENT/SETTLEMENT
AGREEMENT - 3RD VIOLATION

ON this 11th day of February, 2008, in lieu of a public hearing on the matter, the City Council approves the attached Acknowledgement/Settlement Agreement between the above-captioned permittee and the City of Council Bluffs, Iowa.

Pursuant to the Agreement, IT IS THEREFORE ORDERED that a civil penalty of a one thousand five hundred dollar (\$1,500.00) fine be assessed, and that a thirty (30) day cigarette permit suspension be executed against the above-captioned permittee commencing at 12:00 a.m. on _____ and concluding at 12:00 a.m. on _____. This violation, dated December 10, 2007, will count as a **third** violation of Iowa Code Section 453A.2(1), pursuant to Iowa Code Section 453A.22(2)(b).

THOMAS P. HANAFAN

Mayor

Attest:

JUDITH RIDGELEY

City Clerk

Council Communication
February 11, 2008 City Council Meeting

Department:
Community Development

Ordinance No.: N/A

Case/Project No.: N/A

Resolution No.: 08-37

Council Action: 2/11/08

Subject/Title

Engineering Services for 10th Avenue and South 6th Street Reconstruction

Location

10th Avenue (from South Main Street to South 6th Street) and 6th Street (from 9th to 10th Avenues)

Background

Background/Discussion

The City, Pottawattamie County Development Corporation (PCDC) and the Iowa West Foundation have been working on redeveloping the South Main Street area around 9th Avenue for several years. PCDC is working with Artspace Projects, Inc. to convert the property at 1000 South Main Street into affordable multi-family housing for low income individuals and families. On October 8, 2007, the City Council adopted a resolution of support for the Low Income Housing Tax Credit project proposed by Artspace Projects, Inc., approved a development agreement detailing the local financial commitments for the project and approved \$145,000 in 2008 local HOME funds. However, prior to implementation of any project, the area's infrastructure must be accurately assessed and improved.

Discussion

The infrastructure improvements include street paving, sanitary sewer, storm sewer, water and engineering/inspection. All public infrastructure will be designed, installed and inspected under the City's supervision. However, in order to initiate the project, a contract for engineering services is necessary. The Schemmer Associates have submitted a proposal to provide engineering services for the work at the request of the Community Development Department. A resolution authorizing the Mayor's execution of the agreement between the City and Schemmer has been prepared and is attached for your consideration.

Staff Recommendation

The Community Development Department recommends City Council adopt the resolution authorizing the Mayor to execute an agreement with The Schemmer Associates for engineering services in connection with the 10th Avenue and South 6th Street reconstruction project.

Attachments

The Schemmer Associates proposal discussed above has been attached for consideration.

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department
Approved by: Donald D. Gross, Director, Community Development Department



GE

RESOLUTION NO. 08-37

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE SCHEMMER ASSOCIATES FOR ENGINEERING SERVICES IN CONNECTION WITH THE 10TH AVENUE (SOUTH MAIN STREET TO SOUTH 6TH STREET) AND SOUTH 6TH STREET (9TH TO 10TH AVENUES) RECONSTRUCTION PROJECT.

WHEREAS, The City of Council Bluffs wishes to make infrastructure improvements in the South Main Urban Renewal Area, generally located at 10th Avenue (South Main Street to South 6th Street) and South 6th Street (9th to 10th Avenues); and

WHEREAS, The Schemmer Associates have submitted a proposal to provide engineering services for the work necessary for said improvements; and

WHEREAS, The City Council deems approval of said agreement to be in the best interest of the City of Council Bluffs; and

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

That the Mayor is hereby authorized to execute an agreement with The Schemmer Associates for engineering services relative to the 10th Avenue and South 6th Street reconstruction project.

ADOPTED

AND

APPROVED: February 11, 2008

Thomas P. Hanafan

Mayor

ATTEST:

Judith H. Ridgeley

City Clerk

SCHEMMER

ARCHITECTS | ENGINEERS | PLANNERS

January 23, 2008

Mr. Don Gross
Community Development Department
403 Willow Street
Council Bluffs, Iowa 51503

RE: Engineering Services Agreement
10th Avenue Reconstruction
TSA Project No. 01277.916

Dear Mr. Gross:

The Schemmer Associates Inc. (Schemmer) proposes to render professional services to the City of Council Bluffs, Iowa, (City) in connection with the reconstruction of 10th Avenue from South Main Street to 6th Street, and possibly 6th Street from 10th Avenue to 9th Avenue (hereinafter referred to as Project).

I. CONDITIONS OF SERVICE

Services rendered by Schemmer as enumerated under Section II shall be provided under the following conditions:

A. **General Conditions of The Schemmer Associates** (See attached).

B. **Fees**

1. Payroll cost used as the basis for payment mean salaries and wages paid to all personnel engaged directly on the Project, including, but not limited to engineers, architects, surveyors, designers, drafters, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, worker's compensations, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.
2. Hourly, not-to-exceed negotiated maximum fees, as listed in the scope of services below, shall be determined by multiplying the hours charged to the Project for each work classification by the hourly rate for each classification as listed in the current Schedule of Hourly Rates.
3. Lump sum fees, as listed in the scope of services below, shall be a negotiated lump sum amount for such services.

PHONE 712.329.0300
FAX 712.329.9970

Valley View Village
928 Valley View Drive, Suite 12
Council Bluffs, Iowa 51503-5288

SCHEMMER.COM

4. For services during construction, fee shall be determined on an hourly basis in accordance with item I. B - 2 above with a negotiated maximum amount based upon a percent of the averaged bid amounts of the two low bidders.
5. The fee for subconsultants or testing laboratories (as approved by the City) shall be the actual amount billed to Schemmer.
6. For additional services rendered by Schemmer as authorized in writing by the City, the fees shall be computed on an hourly rate basis by multiplying the hours worked by the hourly rates per the current Schedule of Hourly Rates.

C. Indemnification

Each party shall indemnify, defend and save harmless the other, or its representatives from all claims, demands, suites, actions, payments, liability, and judgment, including reasonable attorney's fees to the extent arising out of the negligent acts, errors, or omissions of the Architect/Engineer or Architect/Engineer's agents, servants, or employees.

D. Insurance

Schemmer hereby agrees to obtain and to keep in force during the term of this contract the below-described insurance coverage relating to the services specified under this contract. Schemmer will furnish the City with evidence of such coverage prior to commencing any services under this contract.

Insurance coverage, which Schemmer shall obtain and keep in force, is as follows:

1. Worker's Compensation insurance as required under the laws applicable to the services, and Employer's Liability insurance at a level of \$500,000, which shall cover all of Schemmer's employees engaged in the services specified.
2. Automobile Liability insurance covering all automotive equipment used in connection with the services under this contract, with not less than \$1,000,000 bodily injury per occurrence, and property damage insurance with \$500,000 per occurrence and \$1,000,000 aggregate.
3. Comprehensive General Liability insurance (including contractual, products and completed operations liability insurance) covering services performed under this contract, with not less than \$1,000,000 per occurrence for bodily injury, and property damage insurance with limits of \$500,000 per occurrence and \$1,000,000 aggregate.
4. Excess Liability insurance of \$1,000,000.

II. **SCOPE OF SERVICES**

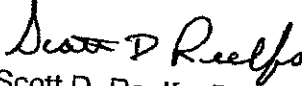
Services to be provided by Schemmer and the Fee Basis are as follows:

<u>Scope of Services</u>	<u>Fee Basis</u>
I. Definition of Problem Scope of Project	Hourly, Not-to- Exceed Negotiated Maximum
II. Survey	Lump Sum
III. Design	Lump Sum
A. Preliminary	
B. Final	
IV. Bid Phase	Lump Sum
V. Construction	Hourly, Not-to-Exceed Negotiated % of construction (average of two low bidders)
A. Observation	
B. Management	
C. Staking	
VI. Project Management	Hourly, Not-to-Exceed Negotiated Maximum
VII. Outside Consultants/Testing	Billed as per invoice
VIII. ROW, Easements, Outside Permits, Assessments	Hourly

If the foregoing proposal and attachments are agreeable, please indicate your acceptance by signing and returning one copy of this proposal.

Sincerely,

THE SCHEMMER ASSOCIATES INC.
ARCHITECTS | ENGINEERS | PLANNERS


Scott D. Reelfs, P.E.
Roadway Manager, Council Bluffs
Associate

ACCEPTED:
CITY OF COUNCIL BLUFFS, IOWA

BY _____
Thomas P. Hanafan, Mayor

DATE _____

ATTEST:

BY _____

GENERAL CONDITIONS

1. **REUSE OF DOCUMENTS.** All documents including drawings, specifications and CADD data on electronic media furnished by The Schemmer Associates Inc. pursuant to this Agreement are instruments of its services in respect to this project. They are not intended or represented to be suitable for reuse on extensions of this project or on any other project. Any reuse without specific written verification or adaptation by The Schemmer Associates Inc. shall be at the user's sole risk and without liability or legal exposure to The Schemmer Associates Inc., and the other party to this Agreement shall indemnify and hold harmless The Schemmer Associates Inc. from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle The Schemmer Associates Inc. to further compensation.
2. **ESTIMATES.** Since The Schemmer Associates Inc. has no control over the cost of labor, materials or equipment or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, estimates of project cost are made on the basis of experience and qualifications and represent the best judgment of design professionals familiar with the industry, but The Schemmer Associates Inc. cannot and does not guarantee that proposals, bids or project costs will not vary from estimates of cost prepared by The Schemmer Associates Inc.
3. **SUSPENSION OR ABANDONMENT.** If the project is suspended for more than three months or abandoned in whole or in part, The Schemmer Associates Inc. shall be paid compensation for services performed prior to receipt of written notice of such suspension or abandonment, together with reimbursable expenses then due.
4. **TERMINATION.** This Agreement may be terminated by either party upon seven days' written notice should either party fail substantially to perform in accordance with its terms through no fault of the other. In the event of termination due to the fault of others than The Schemmer Associates Inc., The Schemmer Associates Inc. shall be paid compensation for services performed to termination date, including reimbursable expenses then due.
5. **SUCCESSORS AND ASSIGNS.** Each party to this Agreement binds him/herself, his/her partners, successors, assigns and legal representatives to the other party, his/her partners, successors, assigns and legal representatives with respect to all covenants of this Agreement. Neither party shall assign, sublet or transfer his/her interest in this Agreement without the written consent of the other.
6. **PAYMENTS.** Payments due The Schemmer Associates Inc. under this Agreement shall be payable within thirty (30) days of the date of billing. If full payment is not received within sixty (60) days of the date of billing, the payment shall bear interest at the highest rate permitted by law but not exceeding eighteen percent (18%).
7. **DELINQUENT PAYMENTS.** (a) Delinquent Progress Payments: It is understood and agreed that should any progress payment hereunder remain due and unpaid for a period of 60 days after invoice, that all services on the part of The Schemmer Associates Inc. will cease and will not resume until all amounts owing for services rendered have been paid in full. Cessation shall not constitute a breach of The Schemmer Associates Inc.'s duties under this agreement, or an election of remedies, and The Schemmer Associates Inc. shall be fully indemnified for any liability or damages thereby caused. (b) Legal Action: No account will be held by The Schemmer Associates Inc. more than 90 days after their invoice. At the end of 90 days all such accounts will be referred for appropriate legal action. (c) Mechanics Liens: Unless specific arrangements for delayed payments have been made, by written agreement, all mechanics lien rights available to The Schemmer Associates Inc. will be exercised within the time period allowed by law.
8. **TAX.** The amount of any excise, gross receipts or sales tax that may be imposed shall be invoiced as a reimbursable expense.

9. **HAZARDOUS MATERIALS.** Unless otherwise provided in this Agreement, The Schemmer Associates and The Schemmer Associates' consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. The Schemmer Associates Inc. shall be indemnified and held harmless against all claims related to hazardous materials.

10. **NOTICE OF LIMITATION OF AGENTS' AUTHORITY.** It is understood and acknowledged that no agent, officer, or principal of The Schemmer Associates Inc. is authorized to vary the terms of this agreement in any particular, except by writing, expressly limiting the application of the terms of this Agreement.

11. **INVALIDATION OF PROFESSIONAL LIABILITY INSURANCE.** The Schemmer Associates shall not knowingly take any action called for by this agreement or arising from the course of this project which shall cause loss of the The Schemmer Associates' professional liability insurance coverage for this project or any aspect of it.

12. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, the Client agrees to limit The Schemmer Associates Inc.'s liability for the Client's damages to the sum of \$50,000 or The Schemmer Associates Inc.'s fee, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

13. **COMPUTER AIDED DESIGN/DRAFTING (CADD).** CADD may be utilized to prepare drawings, specifications, calculations, and other instruments of service prepared by The Schemmer Associates Inc. Submitted data files are intended to work only as described in the agreement and are compatible only with the original hardware and software used to create the files.

13.1. Because data stored on electronic media can deteriorate undetected or be modified without the knowledge of The Schemmer Associates Inc., the Owner agrees to accept responsibility for the completeness, correctness, and readability of the electronic media after an acceptance period of 30 days after delivery of the electronic files, and that upon the expiration of this acceptance period, the Owner will indemnify and save harmless The Schemmer Associates Inc. for any and all claims, losses, costs, damages, awards, or judgments arising from use of the electronic media files or

output generated from them. The Schemmer Associates Inc. agrees that it is responsible for the accuracy of the sealed hard copy drawings that have been or will be submitted, and that such accuracy is defined as the care and skill ordinarily used by members of the profession practicing under similar conditions at the same time and in the same locality. The Schemmer Associates Inc. makes no warranties, express or implied, under this agreement or otherwise, in connection with the services provided.

13.2. The electronic files are submitted to the client for a 30-day acceptance period. During this period, the client may review and examine these files. Any errors detected during this time will be corrected by The Schemmer Associates Inc. as part of the basic agreement. Any changes requested after the acceptance period will be considered additional services to be performed on a time and materials basis, at the standard cost plus terms and conditions. The Schemmer Associates Inc. is not required to maintain copies of the electronic files beyond the acceptance period after delivery of the files.

13.3. The Owner shall be permitted to retain copies of the drawings and specifications prepared in CADD format for the Owner's information. Due to the potential that the information set forth on the electronic media can be modified by the Owner, unintentionally or otherwise, The Schemmer Associates reserves the right to remove all indicia of its ownership and/or involvement from each electronic file.

13.4. Any use or reuse of altered files by the Owner or others without written authorization or CADD adaptation by The Schemmer Associates Inc. for the specific purpose intended will be at the Owner's risk and full legal responsibility. Furthermore, the Owner will, to the fullest extent permitted by law, indemnify and hold The Schemmer Associates Inc. harmless from any and all claims, suits, liability, demands, or costs arising out of or resulting from such use. Any such authorization or CADD adaptation by the Owner will entitle The Schemmer Associates Inc. to additional compensation at the rates established as part of this agreement.

14. **GEOTECHNICAL MATERIALS TESTING SERVICE.** In the case that geotechnical and/or materials testing services are provided by The Schemmer Associates Inc., our supplementary General Conditions for Geotechnical and Materials Testing shall be considered a part of this document.

Council Communication
February 11, 2008 City Council Meeting

Department: Community Development	Ordinance No.: N/A	
Case/Project Nos: URV-08-001 & URV-08-002	Resolution No.: <u>08-39</u> and Resolution No. <u>08-40</u>	Council Action: <u>2/11/2008</u>

Subject/Title
Urban Revitalization Applications for the 2007 Tax Assessment Year

Location
South 19th Street Urban Revitalization Area (South 19th Street & South Omaha Bridge Road)

Background

Chapter 404 of the Iowa Code authorizes a City to designate an area as an urban revitalization area. Improvements to qualified real estate within designated areas may then be eligible to receive a total or partial exemption from property taxes for a specified number of years. The exemptions are intended to stimulate private investment by reducing the tax increase that would normally result from making improvements to real estate property.

Background/Discussion

Urban revitalization tax abatement incentives can apply to residential, commercial and industrial development. Both new construction on vacant or unimproved land and rehabilitation of existing structures are eligible for tax abatement. All eligible commercial and industrial real estate is eligible to receive a partial exemption from taxation or a full exemption on the actual value added by the improvements. The partial exemption is for a period of ten years and the full 100% exemption is for a period of three years.

Discussion

***I. FedEx Ground Package System, Inc.
4406 South 19th Street (Lot 5, South Pointe Subdivision)***

FedEx Ground Package System, Inc. constructed a 68,256 sq. ft. facility in 2005 to accommodate their business-to-business and business-to-residential small package division. In April of 2007 they began a 11,232 sq. ft. expansion of this facility, which was completed in September of 2007. This project is located in the South 19th Street Urban Revitalization Area. The owner is McAllen Properties, LLC and they have authorized FedEx Ground, as the lessee of the property, to act as their agent with respect to the filing of the urban revitalization incentives. They are requesting a partial exemption for ten years. Their 2007 project costs, as of December 31, 2007, total \$747,955.00. A detailed builder's cost breakdown is illustrated in the attached base bid form, as a part of the application. The Community Development Department has reviewed the request and finds the following:

- a) The request is in conformance with the South 19th Street Urban Revitalization Plan.
- b) The request pertains to property improvements located within a designated urban revitalization area.
- c) The request is for work completed in 2007 and all appropriate materials have been submitted within the time required for abatement.
- d) The request is consistent with Chapter 404 of the Iowa Code and applicable city ordinances.
- e) The property is classified as industrial and is therefore consistent with the eligibility criteria contained in the South 19th Street Urban Revitalization Plan.
- f) Building permits have been issued and the project appears to be consistent with all applicable city codes.

Council Communication
February 11, 2008 City Council Meeting

2. RAH Council Bluffs, LLC

4106 South 19th Street (Lot 2, except the west 53.33 feet, South Pointe Subdivision)

In August of 2007 RAH Council Bluffs, LLC began the construction of a 12,000 sq. ft. facility to be occupied by Linweld, Inc. Linweld, Inc. sells welding related equipment and materials. The construction is expected to be completed in February of 2008. This project is located in the South 19th Street Urban Revitalization Area. They are requesting a 100% exemption for three years. Their 2007 project costs, as of December 31, 2007, total \$783,813.94. A detailed builder's cost breakdown is attached for your review. The Community Development Department has reviewed the request and finds the following:

- a) The request is in conformance with the South 19th Street Urban Revitalization Plan.
- b) The request pertains to property improvements located within a designated urban revitalization area.
- c) The request is for work completed in 2007 and all appropriate materials have been submitted within the time required for abatement.
- d) The request is consistent with Chapter 404 of the Iowa Code and applicable city ordinances.
- e) The property is classified as industrial and is therefore consistent with the eligibility criteria contained in the South 19th Street Urban Revitalization Plan.
- f) Building permits have been issued and the project appears to be consistent with all applicable city codes.

Staff Recommendations

Recommendation #1: The Community Development Department recommends that the City Council approve and adopt a resolution granting approval for 2007 tax abatement requested by FedEx Ground Package System, Inc., acting as the owner's authorized agent, for the property located at 4406 South 19th Street.

Recommendation #2: The Community Development Department recommends that the City Council approve and adopt a resolution granting approval for 2007 tax abatement requested by RAH Council Bluffs, LLC for the property located at 4106 South 19th Street.

Attachments

- 1) Urban Revitalization Application from FedEx Ground Package System, Inc.
- 2) Urban Revitalization Application from RAH Council Bluffs, LLC

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department
Approved by: Donald D. Gross, Director, Community Development Department



2008 APPLICATION FOR URBAN REVITALIZATION INCENTIVES

CASE # URV-08-001

1. Applicant: FedEx Ground Package System, Inc. Phone: 412.859.2821
Address: 1000 FedEx Drive, Moon Township, Pennsylvania 15108 *Status: A

2. Represented by: _____
Address: _____ Phone: _____

3. Name of company who will be occupying the building: FedEx Ground Package System, Inc.

4. Address or location of property: 4406 S. 19th Street, Council Bluffs, Iowa 51501

5. Legal description: South Pointe Sub LT 5 (Parcel Number 7444 14 126 002)

6. Present zoning district: I-2

7. Present assessed valuation of property:
Total: \$ 5,000,000
Dwelling: \$ 0 Land: \$ 870,000
Other Building: \$ 4,130,000

8. Project narrative (include size of building, type of business, jobs created, etc.—attach additional sheets if necessary): The project involved the expansion of the existing 68,348 square foot business-to-business and business-to-residential small package transportation facility by 11,232 square feet. The project will allow for the retention of 17 full-time employees, 81 part-time employees, and 49 full-time independent contractor opportunities and the creation of 2 full-time employee positions, 39 part-time employee positions, and 12 full-time independent contractor opportunities by December 31, 2010.

9. Total project investment (cumulative): \$1,074,584.91 (Building: \$747,955.00; Equipment: \$326,629.91)

10. Total project investment (2007 only): \$1,074,584.91

11. Construction start date: April 2, 2007
Construction completion date: September 10, 2007

12. Exemption schedule:
☒ Partial exemption for ten years
☐ 100% exemption for three years
☐ 100% exemption for four years (multi-family residential only)

13. Attached to the application are:
Exhibit 'A' - Builder's cost breakdown or a copy of the contractor's accepted bid or a copy of a bill for completed work.
Exhibit 'B' - Check for application processing fee
Exhibit 'C' - Letter from Property Owner Authorizing FedEx Ground Package System, Inc. to File this Application

14. Will any persons, including families, business concerns or others be displaced as a result of the improvements made for this project? _____ Yes _____ x _____ No

If Yes, please explain: N/A

Status (designate one):
P.O. - Property Owner
C.P. - Contract Purchaser
L.H. - Legal Option Holder
A. - Owner's Authorized Agent

14. Waiver to enter property:

The applicant hereby authorizes the Community Development Department, the Assessor's Office and their representatives to enter the property described above for the purpose of verifying all claims and data related to the application. (Note: Failure to sign the authorization may prevent the processing of the application.)

Heidi K Bartholomew
Signature, Title

Heidi K. Bartholomew, Vice President & Controller
Print name and title

1/29/08
Date

CERTIFICATION

I certify that all information, representations, or statements provided to the City of Council Bluffs, in connection with this application, are true and correct in all material respects.

Heidi K Bartholomew
Signature, Title

Heidi K. Bartholomew, Vice President & Controller
Print name and title

1/29/08
Date

EXHIBIT 'A' - BUILDER'S COST BREAKDOWN

1. TYPE OF BUILDING OR IMPROVEMENT AND USE: FedEx Ground Distribution Center
2. BASIC BUILDING OR IMPROVEMENT CONSTRUCTION: Steel Building Expansion
3. BUILDER'S COST BREAKDOWN: (Must be filled in completely) - See Attached Base Bid Form

ARCHITECT.....
SURVEY.....
EXCAVATING AND GRADING.....
MASON.....

Material.....
Labor.....

CONCRETE (basement, walks, drive).....
ORNAMENTAL.....
CARPENTER (labor, lumber, hardware).....
PAINTING AND DECORATING.....
ROOFING.....
HEATING AND AIR CONDITIONING.....
PLUMBING (including sewers).....
TILE.....
ELECTRICAL.....
INSULATION.....
DRY WALL.....
GLASS.....
BUILDING PERMITS.....
INSURANCE.....
CONSTRUCTION LOAN FEE AND INTEREST.....
TITLE EXPENSE.....
SALE EXPENSE.....
ADVERTISING.....
MISCELLANEOUS.....
OVERHEAD AND PROFIT.....
FIXTURES AND EQUIPMENT.....

TOTAL BUILDING COST.....
PURCHASE PRICE OF LAND..... \$
TOTAL (land plus improvement cost)..... \$

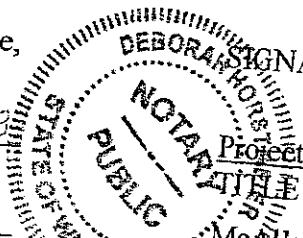
4. CERTIFICATION:

I, the undersigned, representing ownership on the above property, herewith certify that the above statement of amounts and actual value of said property is true and correct, and represents total cost and investment by all parties involved.

Subscribed and sworn to before me,

is 24th day of JANUARY, 2008

Deborah Hors...



SIGNATURE: [Signature]

NAME: Carl Ruedebusch

Project Manager

TITLE OR POSITION WITH COMPANY (Owner)

McAllen Properties Omaha, LLC

THIS SECTION IS FOR OFFICIAL USE ONLY:

Name of Area: South 19th Street Urban Revitalization Area
Date Established: October 25, 2004
Expiration Date: October 25, 2014

Is the application complete? X Yes No
Is the project eligible? X Yes No

The Director of the Community Development Department does hereby certify that the applicant's application is complete, the project as presented is eligible and approves disapproves the work as being in substantial conformance with the improvement plan.

Signature: _____
Director of Community Development

The Mayor and the City Council for the City of Council Bluffs, Iowa, do hereby approve disapprove the applicant's project as being in substantial conformance with the City's plan for urban revitalization and thereby also approve disapprove the project as qualifying for the benefits under urban revitalization.

Signature: _____
Mayor, City of Council Bluffs

This application is forwarded to the Office of the Assessor on the day of , 20 and hereby qualifies for an exemption from taxation as follows:

1. All qualified real estate is eligible to receive a partial exemption from taxation on the actual value added by the improvements. The exemption is for a period of ten years. The amount of the partial exemption is equal to a percent of the actual value added by the improvements, determined as follows:

- a. For the first year, eighty percent
- b. For the second year, seventy percent
- c. For the third year, sixty percent
- d. For the fourth year, fifty percent
- e. For the fifth year, forty percent
- f. For the sixth year, forty percent
- g. For the seventh year, thirty percent
- h. For the eighth year, thirty percent
- i. For the ninth year, twenty percent
- j. For the tenth year, twenty percent

2. All qualified real estate is eligible to receive a one hundred percent exemption from taxation on the actual value added by the improvements. The exemption is for a period of three years.

3. All qualified residential real estate, comprising of 12 or more multi-family dwelling units, is eligible to receive a 100% exemption for a period of four years.

**BUILD TO SUITE
BASE BID FORM**

Developer's Name: **Ruedebsch Development & Construction, Inc.**
 Owner: **Ruedebsch Development & Construction, Inc.**
 Address: **4605 Dovetail Drive
Madison, WI 53704**
 Telephone: **Tele; 608-249-2012, Fax 608-249-2032, Cell 608-575-3249, e-mail Carl@Ruedebsch.**
 Blding Location: **Council Bluff's Addition**
 Bldg SF

11,232.00

<u>Item #</u>	<u>Description</u>	<u>Price</u>
1	Land Cost	
2	Architectoral/Engineering Fees	
3	Developer 3rd Party Engineering	
4	Soil and Engineering/Testing	21,950.00
5	Permits	12,000.00
6	Site Work	5,000.00
	Total Land/Site	2,642.00
		33,515.00
		<hr/>
		75,107.00
7	<u>Building Costs</u>	
7A	Foundations/Slabs/Ext Conc	
7B	Structural Frame	
7C	Insulation	
7D	Erection	75,274.00
	Exterior Walls Masonry	95,485.00
7E	Interior Walls	10,850.00
7F	Finish Hardware	48,889.00
7G	Glass & Glazing	18,461.00
7H	Interior Doors	5,184.00
7I	Exterior Doors & Overhead	712.00
7J	Paint/Wallcoverings	-
7K	Ceilings	2,363.00
7L	Floor Finishes	21,264.00
7M	Training Room (Exact Details need Verification)	19,097.00
7N	Signage	-
7O	Dock Equip./Overhead Doors	825.00
7P	Cabinets/Counters	20,000.00
7Q	Window Covering	738.00
7R	Plumbing	-
7S	Mechanical	-
7T	Sprinkler System	14,754.00
7U	Electrical	26,019.00
7V	Misc Structures	17,450.00
	Sub Total Building	26,350.00
		<hr/>
		403,715.00
8	Paving/Striping	
9	Curbs/Gutters	
10	Storm Sewers/Drianage	32,891.00
11	Utilities	3,117.00
		<hr/>
		-

12	Vehicle Maintenance Equip		
13	Landscaping		
14	Fencing		
15	Connection Fees		11,111.00
	Total Land & Structures		2,111.00
	Taxes, Insurance		528,052.00
	General Conditions		
	Supervision		932.00
	Overhead & Profit		17,487.00
	Interim Financing		37,325.00
	Brokerage Fees		45,542.00
	Commissions		22,500.00
	Sales Tax		30,000.00
	Developer Travel		NA
	Other (Fed Ex Allowance)		4,117.00
			12,000.00
			50,000.00
			219,903.00
	TOTAL PROJECT COSTS		
			747,955.00
			750,000.00

December 14, 2007

Ms. Kimberly Barr
Managing Director, State and Local Tax
FedEx Ground Package System, Inc.
1000 FedEx Drive
Moon Township, PA 15108

RE: Authorization to File 2008 Application for Urban Revitalization Incentives


Dear Ms. Barr:

As owner and lessor of the property located at 4406 S. 19th Street in the City of Council Bluffs, Pottawattamie County, Iowa, further described as Parcel Number 7444 14 126 002 (the "Property"), McAllen Properties Omaha, LLC hereby authorizes FedEx Ground Package System, Inc., lessee of the Property, to act as its agent with respect to the filing of the 2008 Application for Urban Revitalization Incentives (the "Application") for the Property with the City of Council Bluffs.

Also, please find enclosed the completed Exhibit 'A' - Builder's Cost Breakdown, which I understand must be filed with the Application.

Please do not hesitate to contact me at 608.249.2012 if you have any questions or if you need any additional information regarding this matter.

Sincerely,


Carl Reudebusch
Project Manager

Enclosure

cc: Joe Pelle, Fischer & Company
C.J. Girod, Ryan

RESOLUTION NO. 08-39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, IOWA GRANTING APPROVAL OF TAX ABATEMENT ON IMPROVEMENTS MADE TO REAL PROPERTY AT 4406 SOUTH 19TH STREET IN THE SOUTH 19TH STREET URBAN REVITALIZATION AREA DURING THE 2007 TAX ASSESSMENT YEAR.

- WHEREAS,** The City Council has at its discretion the ability to approve tax abatement requests when improvements made to real property within certain urban revitalization areas; and
- WHEREAS,** FedEx Ground Package System, Inc. has made such improvements by completing the expansion of the existing building by 11,232 square feet; and
- WHEREAS,** This building is addressed as 4406 South 19th Street and is legally described as Lot 5, South Point Subdivision; and
- WHEREAS,** The building is owned by McAllen Properties, LLC and they have authorized FedEx Ground Package System Inc., as the lessee of the property, to act as their agent with respect to the filing of the urban revitalization incentives; and
- WHEREAS,** During the 2007 tax assessment year, FedEx Ground Package System, Inc. incurred costs of \$747,955.00; and
- WHEREAS,** The tax abatement request pertains to property improvements located entirely within the boundaries of the South 19th Street Urban Revitalization Area; and
- WHEREAS,** Said work is consistent with all applicable city ordinances and codes, the goals and objectives of the South 19th Street Urban Revitalization Area and Section 404 of the Iowa Code; and
- WHEREAS,** The applicant has requested a partial exemption for ten years as authorized under Iowa Code 404.3 and the South 19th Street Urban Revitalization Area; and
- WHEREAS,** The tax abatement application and all necessary attachments have been reviewed and approved by the Community Development Department.

**NOW, THEREFORE, BE IT RESOLVED
BY THE
CITY COUNCIL OF THE
CITY OF COUNCIL BLUFFS, IOWA**

The City Council hereby finds that the request for review of property tax abatement on improvements made to real property located at 4406 South 19th Street during the 2007 tax assessment year to be in compliance with the purpose and intent of the South 19th Street Urban Revitalization Plan and that approval of tax abatement will be in the best interest of the City of Council Bluffs, Iowa.

BE IT FURTHER RESOLVED

That the City Council does hereby approve tax abatement for said project for the 2007 tax assessment year.

ADOPTED
AND
APPROVED

February 11, 2008

Thomas P. Hanafan Mayor

ATTEST:

Judith H. Ridgeley City Clerk

Council Communication
February 11, 2008 City Council Meeting

Department: Community Development	Ordinance No.: N/A	
Case/Project Nos: URV-08-001 & URV-08-002	Resolution No.: <u>08-39</u> and Resolution No. <u>08-40</u>	Council Action: <u>2/11/2008</u>

Subject/Title
Urban Revitalization Applications for the 2007 Tax Assessment Year

Location
South 19th Street Urban Revitalization Area (South 19th Street & South Omaha Bridge Road)

Background

Background/Discussion

Chapter 404 of the Iowa Code authorizes a City to designate an area as an urban revitalization area. Improvements to qualified real estate within designated areas may then be eligible to receive a total or partial exemption from property taxes for a specified number of years. The exemptions are intended to stimulate private investment by reducing the tax increase that would normally result from making improvements to real estate property.

Urban revitalization tax abatement incentives can apply to residential, commercial and industrial development. Both new construction on vacant or unimproved land and rehabilitation of existing structures are eligible for tax abatement. All eligible commercial and industrial real estate is eligible to receive a partial exemption from taxation or a full exemption on the actual value added by the improvements. The partial exemption is for a period of ten years and the full 100% exemption is for a period of three years.

Discussion

***1. FedEx Ground Package System, Inc.
4406 South 19th Street (Lot 5, South Pointe Subdivision)***

FedEx Ground Package System, Inc. constructed a 68,256 sq. ft. facility in 2005 to accommodate their business-to-business and business-to-residential small package division. In April of 2007 they began a 11,232 sq. ft. expansion of this facility, which was completed in September of 2007. This project is located in the South 19th Street Urban Revitalization Area. The owner is McAllen Properties, LLC and they have authorized FedEx Ground, as the lessee of the property, to act as their agent with respect to the filing of the urban revitalization incentives. They are requesting a partial exemption for ten years. Their 2007 project costs, as of December 31, 2007, total \$747,955.00. A detailed builder's cost breakdown is illustrated in the attached base bid form, as a part of the application. The Community Development Department has reviewed the request and finds the following:

- a) The request is in conformance with the South 19th Street Urban Revitalization Plan.
- b) The request pertains to property improvements located within a designated urban revitalization area.
- c) The request is for work completed in 2007 and all appropriate materials have been submitted within the time required for abatement.
- d) The request is consistent with Chapter 404 of the Iowa Code and applicable city ordinances.
- e) The property is classified as industrial and is therefore consistent with the eligibility criteria contained in the South 19th Street Urban Revitalization Plan.
- f) Building permits have been issued and the project appears to be consistent with all applicable city codes.

Council Communication
February 11, 2008 City Council Meeting

2. RAH Council Bluffs, LLC

4106 South 19th Street (Lot 2, except the west 53.33 feet, South Pointe Subdivision)

In August of 2007 RAH Council Bluffs, LLC began the construction of a 12,000 sq. ft. facility to be occupied by Linweld, Inc. Linweld, Inc. sells welding related equipment and materials. The construction is expected to be completed in February of 2008. This project is located in the South 19th Street Urban Revitalization Area. They are requesting a 100% exemption for three years. Their 2007 project costs, as of December 31, 2007, total \$783,813.94. A detailed builder's cost breakdown is attached for your review. The Community Development Department has reviewed the request and finds the following:

- a) The request is in conformance with the South 19th Street Urban Revitalization Plan.
- b) The request pertains to property improvements located within a designated urban revitalization area.
- c) The request is for work completed in 2007 and all appropriate materials have been submitted within the time required for abatement.
- d) The request is consistent with Chapter 404 of the Iowa Code and applicable city ordinances.
- e) The property is classified as industrial and is therefore consistent with the eligibility criteria contained in the South 19th Street Urban Revitalization Plan.
- f) Building permits have been issued and the project appears to be consistent with all applicable city codes.

Staff Recommendations

Recommendation #1: The Community Development Department recommends that the City Council approve and adopt a resolution granting approval for 2007 tax abatement requested by FedEx Ground Package System, Inc., acting as the owner's authorized agent, for the property located at 4406 South 19th Street.

Recommendation #2: The Community Development Department recommends that the City Council approve and adopt a resolution granting approval for 2007 tax abatement requested by RAH Council Bluffs, LLC for the property located at 4106 South 19th Street.

Attachments

- 1) Urban Revitalization Application from FedEx Ground Package System, Inc.
- 2) Urban Revitalization Application from RAH Council Bluffs, LLC

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department
Approved by: Donald D. Gross, Director, Community Development Department



2008 APPLICATION FOR URBAN REVITALIZATION INCENTIVES

CASE # URV-08-002

1. Applicant: RAH Council Bluffs LLC. Phone: 402-435-8600
Address: 6500 Holdrege Street Lincoln, NE 68505 *Status: P.O.

2. Represented by: Douglas A. Ayars Phone: 402-435-8600
Address: Ayars & Ayars, Inc. 6500 Holdrege Street, Lincoln, NE 68505

3. Name of company who will be occupying the building: Linweld, Inc.

4. Address or location of property: 4106 S. 19th St. Council Bluffs, IA 51501

5. Legal description: Lot 2, except the west 53.33 feet, South Pointe Subdivision

6. Present zoning district: I-2

7. Present assessed valuation of property:
Total: \$0.00 Land: \$2,452
Dwelling: \$0.00 Other Building: \$ N/A

8. Project narrative (include size of building, type of business, jobs created, etc.—attach additional sheets if necessary):
12,000 SF Retail / Distribution Facility.
Business sells welding related equipment and materials.
Relocated from an existing facility in Council Bluffs so no new jobs are created

9. Total project investment (cumulative): \$783,813.94 (Note: 2007 and prior years only)

10. Total project investment (2007 only): \$783,813.94

11. Construction start date: August 29, 2007
Construction completion date: February 15th, 2008

12. Exemption schedule:
☐ Partial exemption for ten years
☒ 100% exemption for three years
☐ 100% exemption for four years (multi-family residential only)

13. Attached to the application are:
Exhibit 'A' - Builder's cost breakdown or a copy of the contractor's accepted bid or a copy of a bill for completed work.
Exhibit 'B' - Check for application processing fee
Exhibit 'C' - _____

14. Will any persons, including families, business concerns or others be displaced as a result of the improvements made for this project? ☐ Yes ☒ No

If Yes, please explain: _____

* Status (designate one):
P.O. - Property Owner
C.P. - Contract Purchaser
L.H. - Legal Option Holder
A. - Owner's Authorized Agent

14. Waiver to enter property:

The applicant hereby authorizes the Community Development Department, the Assessor's Office and their representatives to enter the property described above for the purpose of verifying all claims and data related to the application. (Note: Failure to sign the authorization may prevent the processing of the application.)

Douglas A. Ayars Secretary / Treasurer, B-A Holding Company
Signature, Title
Douglas A. Ayars Secretary / Treasurer, B-A Holding Company
Print name and title
MEMBER COMPANY OF RAH COUNCIL BLUFFS LLC

JAN 31, 2008
Date

CERTIFICATION

I certify that all information, representations, or statements provided to the City of Council Bluffs, in connection with this application, are true and correct in all material respects.

Douglas A. Ayars, SECRETARY / TREASURER, B-A Holding Company
Signature, Title

Douglas A. Ayars. Secretary / Treasurer. B-A Holding Company
Print name and title

JAN 31, 2008
Date

NOTE: B-A HOLDING COMPANY IS A MEMBER OF RAH COUNCIL BLUFFS LLC
B-A HOLDING COMPANY OWNS 100% OF AYARS & AYARS, INC.

EXHIBIT 'A' - BUILDER'S COST BREAKDOWN

1. TYPE OF BUILDING OR IMPROVEMENT AND USE: Linweld Retail/Distribution Facility
2. BASIC BUILDING OR IMPROVEMENT CONSTRUCTION: Pre-Engineered Metal Building
3. BUILDER'S COST BREAKDOWN: (Must be filled in completely)

ARCHITECT.....	
SURVEY.....	
EXCAVATING AND GRADING.....	
MASON.....	
	Material.....
	Labor.....
CONCRETE (basement, walks, drive).....	
ORNAMENTAL.....	
CARPENTER (labor, lumber, hardware).....	
PAINTING AND DECORATING.....	
ROOFING.....	
HEATING AND AIR CONDITIONING.....	
PLUMBING (including sewers).....	
TILE.....	
ELECTRICAL.....	
INSULATION.....	
DRY WALL.....	
GLASS.....	
BUILDING PERMITS.....	
INSURANCE.....	
CONSTRUCTION LOAN FEE AND INTEREST.....	
TITLE EXPENSE.....	
SALE EXPENSE.....	
ADVERTISING.....	
MISCELLANEOUS.....	
OVERHEAD AND PROFIT.....	
FIXTURES AND EQUIPMENT.....	
TOTAL BUILDING COST.....	\$783,803.94
(SEE ATTACHED INVOICE DOCUMENTATION)	
PURCHASE PRICE OF LAND.....	\$10.00
TOTAL (land plus improvement cost).....	\$783,813.94
(2007 and prior years only)	

4. CERTIFICATION:

I, the undersigned, representing ownership on the above property, herewith certify that the above statement of amounts and actual value of said property is true and correct, and represents total cost and investment by all parties involved.

Subscribed and sworn to before me,

this ____ day of _____, 20____

Notary Public _____

SIGNATURE: _____
NAME

TITLE OR POSITION WITH COMPANY

OWNER'S NAME

NAME OF BUSINESS OR COMPANY

THIS SECTION IS FOR OFFICIAL USE ONLY:

Name of Area: South 19th Street Urban Revitalization Area
Date Established: October 25, 2004

Date Established: October 25, 2004

Expiration Date: October 25, 2014

Is the application complete? X Yes No
Is the project eligible? X Yes No

Is the project eligible? X Yes No
X Yes No

The Director of the Community Development Department does hereby certify that the applicant's application is complete, the project as presented is eligible and _____ approves _____ disapproves the work as being in substantial conformance with the improvement plan.

Signature: _____
Director of Community Development

The Mayor and the City Council for the City of Council Bluffs, Iowa, do hereby _____ approve _____ disapprove the applicant's project as being in substantial conformance with the City's plan for urban revitalization and do thereby also _____ approve _____ disapprove the project as qualifying for the benefits under urban revitalization.

Signature: _____
Mayor, City of Council Bluffs

This application is forwarded to the Office of the Assessor on the _____ day of _____, 20____, and hereby qualifies for an exemption from taxation as follows:

1. All qualified real estate is eligible to receive a partial exemption from taxation on the actual value added by the improvements. The exemption is for a period of ten years. The amount of the partial exemption is equal to a percent of the actual value added by the improvements, determined as follows:

- a. For the first year, eighty percent
- b. For the second year, seventy percent
- c. For the third year, sixty percent
- d. For the fourth year, fifty percent
- e. For the fifth year, forty percent
- f. For the sixth year, thirty percent
- g. For the seventh year, thirty percent
- h. For the eighth year, twenty percent
- i. For the ninth year, twenty percent
- j. For the tenth year, twenty percent

2. All qualified real estate is eligible to receive a one hundred percent exemption from taxation on the actual value added by the improvements. The exemption is for a period of three years.
3. All qualified residential

3. All qualified residential real estate, comprising of 12 or more multi-family dwelling units, is eligible to receive a 100% exemption for a period of four years.

Combined

Invoice Totals through December 31, 2007

Project Design	RAH Council Bluffs	Lincoln	CRIF	Total	Total
	Contract Amount	Contract Amount	Contract Amount	Contract Amount	Contract Amount
1 Architecture	\$ 27,600.00	\$ 27,600.00	\$ 27,600.00	\$ 27,600.00	\$ 27,600.00
2 Structural Engineering	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00
3 Mech Engineering	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
4 Civil Engineering	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00
A. Design Totals	\$ 41,700.00	\$ 41,700.00	\$ 41,700.00	\$ 41,700.00	\$ 41,700.00
Construction					
1 General Conditions					
2 Building Permits	\$ 69,446.30	\$ 48,388.39	\$ 69,446.30	\$ 69,446.30	\$ 69,446.30
3 Sitework	\$ 4,105.00	\$ 4,105.00	\$ 4,105.00	\$ 4,105.00	\$ 4,105.00
4 Masonry	\$ 67,000.00	\$ 40,907.00	\$ 67,000.00	\$ 67,000.00	\$ 67,000.00
5 Metals	\$ 162,785.41	\$ 131,384.41	\$ 162,785.41	\$ 162,785.41	\$ 162,785.41
6 Wood & Plastics	\$ 35,747.02	\$ 30,747.02	\$ 35,747.02	\$ 35,747.02	\$ 35,747.02
7 Moisture Protection	\$ 184,440.38	\$ 174,355.27	\$ 184,440.38	\$ 184,440.38	\$ 184,440.38
8 Doors/Windows					
9 Finishes					
10 Specialties					
12 Special Construction					
15 Mechanical Systems					
16 Electrical	\$ 88,377.67	\$ 45,586.20	\$ 88,377.67	\$ 88,377.67	\$ 88,377.67
B. Construction Totals	\$ 73,827.22	\$ 37,065.64	\$ 73,827.22	\$ 73,827.22	\$ 73,827.22
Change Orders					
CR#1- Combination Alarm/Security Panel	\$ 870,734.00	\$ 522,656.12	\$ 870,734.00	\$ 870,734.00	\$ 870,734.00
CR#2- Revise Retail Showroom Lighting					
CR#3- Add Lapidum in Distribution Area					
CR#4- Plastic Reflectors - 9 Retail High Bays					
CR#5- Ductwork Exhaust Casing - Add Kura-N-Harden					
CR#6- Ductwork Exhaust Casing - Add Kura-N-Harden					
CR#7- Ductwork Exhaust Casing - Add Kura-N-Harden					
CR#8- Ductwork Exhaust Casing - Add Kura-N-Harden					
CR#9- Ductwork Exhaust Casing - Add Kura-N-Harden					
CR#10- Add to Submittal Completion for Washers					
CR#11- Revise Int. Deck Vail (Time & Mat as of 12/28)					
Change Order Totals	\$ 712,434.00	\$ 584,235.12	\$ 712,434.00	\$ 712,434.00	\$ 712,434.00
PROJECT TOTALS	\$ 712,434.00	\$ 584,235.12	\$ 712,434.00	\$ 712,434.00	\$ 712,434.00

RESOLUTION NO. 08-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, IOWA GRANTING APPROVAL OF TAX ABATEMENT ON IMPROVEMENTS MADE TO REAL PROPERTY AT 4106 SOUTH 19TH STREET IN THE SOUTH 19TH STREET URBAN REVITALIZATION AREA DURING THE 2007 TAX ASSESSMENT YEAR.

- WHEREAS,** The City Council has at its discretion the ability to approve tax abatement requests when improvements made to real property within certain urban revitalization areas; and
- WHEREAS,** RAH Council Bluffs, LLC has made such improvements by constructing a 12,000 sq. ft. building; and
- WHEREAS,** This building is addressed as 4106 South 19th Street and is legally described as Lot 2, except the west 53.3 feet, South Pointe Subdivision; and
- WHEREAS,** The building is owned by RAH Council Bluffs, LLC and will be occupied by Linweld, Inc.; and
- WHEREAS,** During the 2007 tax assessment year, eligible costs of \$783,813.94 were incurred; and
- WHEREAS,** The tax abatement request pertains to property improvements located entirely within the boundaries of the South 19th Street Urban Revitalization Area; and
- WHEREAS,** Said work is consistent with all applicable city ordinances and codes, the goals and objectives of the South 19th Street Urban Revitalization Area and Section 404 of the Iowa Code; and
- WHEREAS,** The applicant has requested a 100% exemption for three years as authorized under Iowa Code 404.3 and the South 19th Street Urban Revitalization Area; and
- WHEREAS,** The tax abatement application and all necessary attachments have been reviewed and approved by the Community Development Department.

**NOW, THEREFORE, BE IT RESOLVED
BY THE
CITY COUNCIL OF THE
CITY OF COUNCIL BLUFFS, IOWA**

The City Council hereby finds that the request for review of property tax abatement on improvements made to real property located at 4106 South 19th Street during the 2007 tax assessment year to be in compliance with the purpose and intent of the South 19th Street Urban Revitalization Plan and that approval of tax abatement will be in the best interest of the City of Council Bluffs, Iowa.

BE IT FURTHER RESOLVED

That the City Council does hereby approve tax abatement for said project for the 2007 tax assessment year.

ADOPTED
AND
APPROVED

February 11, 2008

Thomas P. Hanafan Mayor

ATTEST:

Judith H. Ridgeley City Clerk